IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2397 of 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr.S.D.Thokade with Mr. S.A. Pawar, for the Petitioner
Mr. R.C. Dhru for Respondent Nos. 2 and 4.
Mr. S.R. Nargolkar, A.G.P,. for Respondent Nos. 1 and 3.
Mr. Nilesh Pandya, for Respondent No.6.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.

DATED : 4th February, 2005
P.C.

1. The Respondent No.4 had obtained recovery certificate under Section 101 of the M.C.S. Act against the Respondent No.5. The petitioner was a surety for the said loan. The assets of the Respondent No.5 have been sold. The petitioner is a guarantor. Even though she may be the wife of the principal shareholder of the Respondent No.5 really cannot complain against the sale. As the Respondent No.5 is still due and owing moneys to Respondent No.4 the residential flat standing in her name of the late husband of the petitioner is sought to be sold. The petitioner challenges the said auction.

2. The moneys were advanced to the Respondent No.5. The Respondent No.5 is in default. The Respondent No.4 cannot be asked for ever to wait for the recovery of the amounts. The Respondent No.4 thereafter put up the flat for auction. This Court by order dated 22nd December, 2004 permitted the Respondent Nos. 2 and 4 to proceed with the sale of the residential flat by way of public auction. The petitioner was also entitled to participate in that auction and bring offers. There was a further direction that the Respondent Nos. 2 and 4 will not dispossess the petitioner till the entire auction is completed.

3. Counsel for the Respondent No.4 points out that intimation of the auction was given to the petitioner. The petitioner disputes the same. Counsel for the Respondent No.4 points out that the upset price of the flat was Rs.16,20,000/- whereas in the auction sale they have received Rs.18,80,000/-. The outstanding till date are over Rs.2.00 crore.

4. If the petitioner deposits in this Court a sum of Rs.18,80,000/- within

two weeks from today the petition to be placed for admission after two weeks. If the amount is not deposited the petition to stand dismissed without any further order.

. Personal Secretary of this Court to issue authenticated copy of this order to the parties.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)